upon either a valuable or meritorious consideration, and its terms must be definite.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 491, 505.]

†**3. Specific Performance (§ 6, 32 (1), 105 (3)*)—Mutuality—Good Faith.**—There must be mutuality in both the obligation and the remedy, and the person seeking specific performance must show himself to have been ready, desirous, prompt, and eager in the assertion of his rights.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 499, 569; 16 Va.-W. Va. Enc. Dig. 1136, cited by the court.]

4. Specific Performance (§ 105 (3)*)—Laches—Reason for Delay.—Where more than 13 years elapsed between the date of contract to convey realty and adjudication of the purchaser's insanity, and no reason for the delay is shown, suit by the purchaser's committee for specific performance is barred.

[Ed. Note.—For other cases, see 12 Va.-W. Va. Enc. Dig. 569, cited by the court.]

5. Evidence (§ 400 (2)*)—Parol Evidence—Supplying Agreement.—While parol evidence may be introduced to supply deficiencies in the description of land, or to explain ambiguities in the agreement, such evidence cannot be introduced to supply the lack of an agreement, or by construction to alter or vary it, and create a different agreement from that to which the parties have assented.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 644.]

Appeal from Circuit Court, Rockbridge County.

Bill by C. S. W. Barnes, committee of W. A. Hoster (a person of unsound mind), against A. M. Zollman and others. Demurrer to bill sustained, and complainant appeals. Affirmed.

Wallace Ruff and *C. S. W. Barnes,* of Staunton, for appellant.

Curry & Curry, of Staunton, *H. S. Rucker,* of Buena Vista, *Hugh C. Davis* and *Wm. A. Anderson,* of Lexington, for appellees.

BOWEN'S EX'R et al. *v.* BOWEN et al.

Nov. 15, 1917.

[94 S. E. 166.]

1. Appeal and Error (§ 554 (2)*)—Motion to Dismiss Writ of Error—Omission of Bills of Exception from Record.—Motion to dismiss writ of error for omission of the bills of exception from the record

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

†See valuable notes in 3 Gratt. (Va. Rep. Anno.) 628, 12 Gratt. (Va. Rep. Anno.) 634, cited by the court.

will be overruled where, in response to writ of certiorari, the record was completed before the motion was made.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 505.]

2. Appeal and Error (§ 231 (3)*)—Reservation of Grounds of Review—General Objection to Evidence.—A general objection to evidence, if overruled, cannot avail.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 581, 592; 5 Va.-W. Va. Enc. Dig. 375.]

3. Evidence (§ 553 (2)*)—Expert Opinion—Hypothetical Questions.—Though a hypothetical question to an expert witness must embody all of the material facts which the evidence tends to prove affecting the question on which the expert is asked to express an opinion, it is not necessary that the question should embody all of the immaterial facts.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 787.]

4. Evidence (§ 553 (2)*)—Expert Opinion—Hypothetical Question—Objection for Omission of Material Facts.—If any fact or testimony be omitted from a hypothetical question to an expert witness which the exceptant thinks is material, it is his duty clearly to indicate the defect to the court, and thereupon the court should require the expounder of the question to supply such omissions in the question as are material.

[Ed. Note.—For other cases, see 5 Va.-W. Va. Enc. Dig. 787.]

5. Appeal and Error (§ 206 (2)*)—Reservation of Grounds of Review—Objections to Evidence.—Suggestions as to the insufficiency of hypothetical questions to expert witnesses should have been made in the trial court, and it is too late to make such objections for the first time on appeal.

[Ed. Note.—For other cases, see 1 Va.-W. Enc. Dig. 560.]

6. Appeal and Error (§ 1015 (2)*)—Review—Verdict—Demurrer to Evidence Rule—Statute.—In considering motion to set aside the verdict as contrary to the law and the evidence, the Supreme Court is controlled by the demurrer to the evidence rule (Code 1904, § 3484), and is prohibited from setting aside any verdict merely because of a serious conflict in the evidence, for the motion cannot prevail unless the evidence on which the verdict is based is clearly insufficient to support it.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 620.]

7. Wills (§ 55 (5)*)—Insanity of Testator—Sufficiency of Evidence.—In a will contest, evidence as to testator's insanity held sufficient to sustain the jury's finding that the will was invalid.

[Ed. Note.—For other cases, see 16 Va.-W. Va. Enc. Dig. 1274.]

8. Wills (§ 405*)—Probate—Costs Taxable against Estate.—Where the executor named in a supposed testamentary paper in the per-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

formance of his duty offers it for probate, his costs are taxed against the estate.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 768.]

9. Wills (§ 404*)—Probate—Costs—Statute.—Where the beneficiary and not the executor was the active litigant who sought probate of an alleged will, the contest being between him as a beneficiary and the heirs at law, the heirs, who prevailed below, were properly awarded their costs against the beneficiary, under Code 1904, § 3545, declaring that the party for whom final judgment is given, whether plaintiff or defendant, shall recover his costs against the opposite party.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 768.]

Error to Circuit Court, Albemarle County.

Proceedings for probate of will by L. M. Bowen's executor and H. A. Sandridge, contested by T. F. Bowen and others. To review judgment against the will, proponents bring error. Judgment affirmed.

Allen & Walsh and *E. O. McCue,* all of Charlottesville, for the plaintiffs in error.

Frank Gilmer, of Charlottesville, and *Chas. A. Hammer* and *D. O. Dechert,* both of Harrisonburg, for defendant in error.

BARE *v.* COMMONWEALTH.

Nov. 15, 1917.

[94 S. E. 168.]

1. Criminal Law (§ 823 (1)*)—Instructions—Repetition.—Defendant's requested instructions, fully covered by instructions given by the court at the instance of the commonwealth, were properly refused, it being objectionable to multiply instructions which repeat the same propositions of law in different terms.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 742.]

2. Criminal Law (§ 636 (1)*)—Necessity for Plea—Arraignment—Statute.—If accused is absent, no arraignment of him can be made, but, in misdemeanor cases, under Code 1904, § 4012, providing that in prosecutions for misdemeanors, after a summons has been executed ten days before the first day of the term of court, or if accused was admitted to bail and made default, the court may award a capias, or proceed to trial as if accused had appeared and pleaded not guilty, the court may proceed to trial as if accused had appeared and pleaded not guilty, since if he desires to make defense, and goes to trial without pleading, he waives his right.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 37.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.